

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee.

v.

No. 99-4525

CHRISTOPHER HASTINGS,
Defendant-Appellant.

Appeal from the United States District Court
for the District of South Carolina, at Charleston.
Patrick Michael Duffy, District Judge.
(CR-98-600)

Submitted: January 25, 2000

Decided: March 2, 2000

Before WILKINS, NIEMEYER, and TRAXLER, Circuit Judges.

Affirmed by unpublished per curiam opinion.

COUNSEL

Lionel S. Lofton, LOFTON & LOFTON, P.C., Charleston, South
Carolina, for Appellant. J. Rene Josey, United States Attorney, Robert
H. Bickerton, Assistant United States Attorney, Charleston, South
Carolina, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See
Local Rule 36(c).

OPINION

PER CURIAM:

Christopher Hastings appeals the 300-month sentence he received after he pled guilty to conspiracy to possess cocaine and marijuana with intent to distribute. See 21 U.S.C. § 846 (1994). Hastings contends that the district court erred in sentencing him as a career offender, see U.S. Sentencing Guidelines Manual, § 4B1.1 (1998), because the 21 U.S.C. § 851 (1994) information filed by the government failed to give him notice of the two prior convictions used to classify him as a career offender and because he was misled about the nature of a 1988 California drug conviction. We affirm.*

As Hastings concedes, his first claim is foreclosed by our holding in United States v. Foster, 68 F.3d 86, 89 (4th Cir. 1995), that the § 851 notice requirement does not apply when the government seeks a sentence enhancement under the sentencing guidelines rather than a statutory enhancement. With respect to the 1988 conviction for possession of rock cocaine for sale, the fact that it was incompletely described on the state judgment form (and consequently in the § 851 information and the plea agreement) did not give the district court a basis for disregarding it once its true nature was discovered during preparation of the presentence report.

We therefore affirm the sentence. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

*The government suggests that Hastings waived the issue of lack of notice in the § 851 information, but he raised the issue in a general manner in his objection to the presentence report.